

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B02
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Date:
September 7, 2010

Legend:

Fund A =

Fund B =

Fund C =

Fund D =

Trust =

Subsidiary A =

Subsidiary C =

Subsidiary D =

State =

Country =

Type X =

Company
Type Y =
Company
Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to your letter dated April 14, 2010, submitted by your authorized representative on behalf of Fund A, Fund B, Fund C, and Fund D (each a “Fund” and, together, the “Funds”). The Funds request that the Internal Revenue Service rule that subpart F income of a wholly-owned controlled foreign corporation subsidiary of each Fund is qualifying income to such Fund under § 851(b)(2) of the Internal Revenue Code of 1986, as amended (the Code).

Facts:

Each Fund is a separate series of Trust, which is a statutory trust organized under the laws of State. Trust is an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act). Fund A and Fund B have an annual accounting period ending Date 1. Fund C has an annual accounting period ending Date 2. Fund D has an annual accounting period ending Date 3.

Fund A represents that it qualifies as a regulated investment company (RIC) under § 851 of the Code. Each of Fund B, Fund C and Fund D represents that it will qualify as a RIC under § 851 of the Code for its first year of operations and intends to continue to so qualify.

Each of the Funds has or will have a wholly owned subsidiary organized under the laws of Country (each a “Subsidiary” and, together, the “Subsidiaries”). Fund A owns all of the shares of Subsidiary A, a Type X Company. A new wholly owned subsidiary of Fund B (“Subsidiary B”) will be organized as a Type Y Company. Fund C and Fund D wholly own Subsidiary C and Subsidiary D, respectively, each of which is a Type Y Company.

A company organized as a Type X Company or a Type Y Company under the laws of Country provides limited liability for all of its shareholders. Each Fund represents that its Subsidiary will be treated as an association taxable as a corporation under §§ 301.7701-2 and 301.7701-3 of the Procedure and Administration Regulations.

Each Fund represents that, although its Subsidiary will not be registered as an investment company under the 1940 Act, it will comply with the requirements of section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives.

Each Fund intends to invest a portion of its assets in its Subsidiary, subject to the limitations set forth in § 851(b)(3) of the Code. Subsidiary A, Subsidiary B and Subsidiary D will invest primarily in commodity and financial futures, option and swap contracts, as well as fixed income securities and other investments intended to serve as margin or collateral for their respective derivative positions. Subsidiary C invests, directly or through pooled investment vehicles, in futures, options, forward contracts and other derivative instruments linked to or deriving their value from commodities, currencies, interest rates, stock market indices, energy resources, metals, or agricultural products.

Each Fund represents that its Subsidiary will be a controlled foreign corporation and that the Fund will include in its income the subpart F income of its Subsidiary under the provisions of subpart F of the Code.

Law and Analysis:

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Under § 851(b)(2), a corporation's qualifying income includes –

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of [the 1940 Act]) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies

Section 2(a)(36) of the 1940 Act defines the term “security” as –

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a

national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

In addition, the flush language of § 851(b) of the Code provides that, for purposes of § 851(b)(2), there shall be treated as dividends amounts included in gross income under §§ 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under §§ 959(a)(1) or 1293(c) (as the case may be), there are distributions out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation’s taxable year. A United States shareholder is defined in § 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. Each Fund is a United States person and each Fund represents that its Subsidiary is (or will be upon organization) wholly owned by such Fund and will be treated as a CFC under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder’s pro rata share of the CFC’s subpart F income for the taxable year.

Section 952 of the Code defines subpart F income to include foreign base company income determined under § 954. Under § 954(a)(1), foreign base company income includes foreign personal holding company income determined under § 954(c). Section 954(c)(1) defines foreign personal holding company income to include (among other things): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

Each Subsidiary’s income from its investments in commodities and commodity-linked instruments may generate subpart F income. Each Fund will therefore be required to include in its income its pro rata share of its Subsidiary’s subpart F income for each taxable year in accordance with § 951.

Conclusion:

Based on the facts as represented, we rule that subpart F income of each Subsidiary attributable to the corresponding Fund is income derived with respect to such Fund's business of investing in the stock of such Subsidiary and thus constitutes qualifying income under § 851(b)(2) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether the Fund qualifies as a RIC under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it, and is limited to the facts as represented by the taxpayer. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)